

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

FLIGHTCAR, INC.,

Plaintiff,

vs.

CITY OF MILLBRAE, and DOE 1 through  
DOE 50,

Defendants.

Case No: C 13-5802 SBA

**ORDER DIRECTING PLAINTIFF  
TO FILE RESPONSE TO  
DEFENDANTS' MOTION TO  
DISMISS**

On December 23, 2013, Defendant filed a motion to dismiss for failure to state a claim. Dkt. 4. Under Civil Local Rule 7-3(a), an opposition to a motion must be filed within fourteen days of the date the motion was filed, and the reply is due seven days thereafter. As such, Plaintiff's response to the motion should have been filed by no later than January 6, 2014. To date, Plaintiff has not filed any response to Defendant's motion.

This Court's Standing Orders warn that the failure to file a response to a motion may be construed as consent to the relief sought in the unopposed motion. As such, it is well within the discretion of the Court to grant Defendant's motion as unopposed. See Fed. R. Civ. P. 41(b); Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Nevertheless, mindful of its obligation to first consider to less drastic alternatives, the Court will afford Plaintiff one further opportunity to respond to the pending motion. Accordingly,

IT IS HEREBY ORDERED THAT Plaintiff shall have until January 20, 2014 to file and serve its response (i.e., either an opposition or a statement of non-opposition) to Defendant's Rule 12(b)(6) motion to dismiss. Plaintiff's response shall comply in all respects with the Federal Rules of Civil Procedure and the Court's Civil Local Rules including, without limitation, Civil Local Rules 7-3 through 7-5. **PLAINTIFF IS**

1 **WARNED THAT THE FAILURE TO FILE A RESPONSE BY THIS DEADLINE**  
2 **AND/OR TO COMPLY WITH THIS ORDER OR ANY OTHER APPLICABLE**  
3 **PROCEDURAL RULES WILL RESULT IN THE GRANTING OF THE PENDING**  
4 **MOTION AND THE DISMISSAL OF THIS ACTION.** In the event Plaintiff timely  
5 files a response, Defendant may file a reply seven days after the revised deadline for  
6 Plaintiff's response.

7 IT IS SO ORDERED.

8 Dated: 1-13-14

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge